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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1110

PAN AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

versus

CARLOS MANUEL THEYE Y AJURIA,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Louisiana.

BRIEF FOR RESPONDENT IN OPPOSITION.

May It Please the Court:

The Act of State doctrine as announced by this Court in the recent decision of *Banco Nacional de Cuba v. Sabbatino*, No. 16, October Term, 1963, 84 S. Ct. 923, 11 L. Ed. 2d 804, has one limitation. The doctrine has no extra-territorial effect but limits the *respect* due to the act of the foreign sovereign to that done "within its own territory".

ARGUMENT

Although there is similarity in the factual circumstances, i.e., a United States insurer of a foreign national, there is no conflict between the instant decision of the Louisiana Supreme Court and the per curiam decisions of this Court in *Aetna Insurance Company v. Menendez*, No. 68, October Term, 1963, 84 S. Ct. , 11 L. Ed. 2d 804, and *Pan American Life Insurance Co. v. Menendez Rodriguez*, No. 67, October Term, 1963, 84 S. Ct. , 11 L. Ed. 2d 804.

SITUS

The distinguishing feature which dissolves the apparent conflict is *situs*. In *Rodriguez* and *Menendez*, the contracts were executed and performable in Cuba and, therefore, had *situs* in Cuba. The policy herein was issued, executed, delivered and performable in Louisiana, all premiums were paid in United States currency and, as found by the highest court of Louisiana, the contract had *situs* in Louisiana and, therefore, was governed by the laws of Louisiana.

EXTRATERRITORIALITY

Prior to the pronouncement of the *Sabbatino* decision, one of the leading authorities in the field of international law was the decision of *Dougherty v. Equitable Life Assurance Soc'y. of United States*, 266 N. Y. 71, 193 N.E. 897. On facts similar to the "insurance cases" in litigation at this time involving the interpretation of the Act of State doctrine, the New York Court of Appeals made an observation which is singularly appropriate herein:

> "* * * Naturally their acts could not effect contracts made in New York nor contracts to be performed here according to New York law."
>
> 266 N. Y. 71, 78.

The instant policy is a fully-paid contract of insurance with no indebtedness thereon. The sole obligor under the contract is a corporation of these United States and its performance thereunder is governed by Louisiana law under which it was created. It is inconceivable and beyond the comprehension of respondent how a foreign sovereign, without any connexity to the contract, could abrogate the obligations or the provisions of the contract.

To enlarge the scope of the Act of State doctrine by giving it effect in purely domestic contracts would render vulnerable every law of this nation concerning private and contractual rights. All transactions in this country with foreign nationals would be endangered because the foreigner, after accepting the benefits of an agreement, could rescind and absolve himself from performance by pleading prohibition of the obligation under foreign law.

STATE LAWS AS RULES OF DECISION

Except in matters governed by the Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. *Erie v. Tompkins*, 304 U.S. 64. Where a contract which is executed and performable within a state is interpreted by the highest court in that state, then that decision, in absence of any federal question, is binding upon this Court. *Equitable Life Assurance Society v. Brown*, 213 U.S. 25, *Kahlin v. New York Life Insurance Co.*, 304 U.S. 202. There is no federal question here.

CONCLUSION

It is submitted that a contract which has situs in the United States as the Supreme Court of Louisiana here found, may not be modified or abrogated by the act of a

foreign sovereign. The application for the writ of certiorari should be denied.

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CERTIFICATE

I hereby certify that copies of the above and foregoing brief have been served upon opposing counsel this day of June, 1964.

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